

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA No. D-1115-DB of 2009 (O & M)
Date of decision: 18.02.2016.

Kulwinder SinghAppellant.
Versus

State of Punjab ...Respondent.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Manoj Kumar, Advocate for the appellant.

Ms. Amarjit Kaur Khurana, Addl. A.G., Punjab
for the State.

S.S.SARON, J.

The appeal has been filed by Kulwinder Singh (appellant) against the judgment of his conviction and order of sentence dated 18.11.2009 passed by the learned Additional Sessions Judge, (Fast Track Court), Patiala whereby the appellant has been convicted for the commission of an offence punishable under Section 304-B of the Indian Penal Code ('IPC' - for short) and sentenced to undergo imprisonment for life.

FIR in the case has been registered on the statement of Himmat Singh (complainant), who is father of Jaspreet Kaur (deceased in the case). According to the complainant-Himmat Singh, he was resident of village Rania, Police Station Sadar Ludhiana, District Ludhiana. He was working as a carpenter and running a carpenter shop at

village Alamgir. He had five daughters. His eldest daughter namely Sarbjit Kaur was married with Balwant Singh of village Kheri Jattan. About eight months earlier to his making a statement to the police on 02.05.2005, the marriage of his youngest daughter namely Jaspreet Kaur (deceased) was solemnized with Kulwinder Singh, carpenter (appellant) of village Bheelowal, Police Station Sadar Nabha, by way of Anand Karaj ceremony. After marriage of Jaspreet Kaur, her mother-in-law namely Parmjit Kaur (accused No.2), father-in-law Karnail Singh (accused No.3), husband Kulwinder Singh (appellant), sister-in-law Gurmit Kaur (accused No.4) and brother-in-law i.e. husband's younger brother namely Jagtar Singh (accused No.5) used to taunt the daughter of the complainant for bringing insufficient dowry and they used to complain that her father had given nothing to her in dowry. The daughter of the complainant gave telephone message on the mobile phone of the complainant on 01.05.2005 that her in-laws were harassing her for bringing inadequate dowry and he should come and take her to her parental house. Then the complainant along with his brother-in-law, i.e. wife's sister's husband ('sadu') namely Kesar Singh resident of village Monvi, Karamjit Singh resident of Raipur and the eldest son-

in-law of the complainant namely Balwant Singh reached the house of in-laws of Jaspreet Kaur at village Bheelowal. They made her father-in-law, mother-in-law, son-in-law as well as their daughter to understand the problem and not harass the daughter of the complainant and they returned to their house. Then at about 06:00 p.m. on 02.05.2005, Kesar Singh brother-in-law, i.e. wife's sister's husband ('sadu') of the complainant gave a message on the mobile phone of the complainant that the in-laws of Jaspreet Kaur had committed her murder. The complainant was asked to reach village Bheelowal. The complainant along with his brother Mehar Singh and cousin Santokh Singh, besides, respectable persons of the village, after arranging a vehicle, reached village Bheelowal at the house of in-laws of Jaspreet Kaur. The complainant saw the dead body of Jaspreet Kaur lying on a bed in the house of her in-laws. It is alleged that the death of the daughter of the complainant was caused by her father-in-law Karnail Singh, mother-in-law Parmjit Kaur, husband Kulwinder Singh (appellant), husband's younger brother ('dewar') Jagtar Singh and husband's sister namely Gurmit Kaur ('nanad') for bringing less dowry. The complainant left his brother Major Singh and other persons of his village near the dead body of Jaspreet Kaur and he

along with his cousin Santokh Singh reached the police station for giving information. Police proceedings were recorded by Inspector/SHO Harbhajan Singh, who was present at the police station.

Police proceedings were recorded to the effect that the complainant Himmat Singh along with his cousin Santokh Singh came present at the police station. The complainant got his statement recorded, which had been written word by word and read over to him. After hearing and admitting the same to be correct, the complainant signed the same in Punjabi, which was attested by Inspector/SHO. From his statement, an offence punishable under Section 304-B IPC was made out. Intimation was asked to be given to the senior officers and also the Control Room through wireless. An entry was made in the register. Copies of the FIR as special reports were sent to the senior police officers and the Illaqa/Area Magistrate through Constable Kulwant Singh. Inspector/SHO along with other police officials as also the complainant and Santokh Singh proceeded in a government vehicle at the place of occurrence at village Bheelowal for investigation.

Investigations in the case was conducted by Inspector Harbhajan Singh SHO Police Station (PW-11) who

on 03.05.2005 along with the police party reached village Bheelowal at the place of occurrence. Inquest report (Ex. PW9/E) was prepared and an application (Ex. PW9/C) for conducting the post-mortem examination of Jaspreet Kaur was submitted. A rough site plan of the place of occurrence with correct marginal notes (Ex. PW-11/A) was prepared. From the spot, the investigating officer (PW-11) took the ceiling fan, head gear i.e. scarf ('chunni') and a wooden table in possession of police vide memo (Ex. PW6/A), which was attested by SI Tilak Raj and ASI Karmvir Singh. Photographs were taken at the spot. The dead body was sent to Civil Hospital, Nabha, through ASI Gural Singh (PW-10). ASI Gural Singh (PW-10) after the post-mortem examination had been conducted, produced a parcel of the clothes of deceased Jaspreet Kaur, which consisted of 'salwar' (ladies trousers), shirt, headgear and underwear bearing seal impression of 'PBS' along with sample seal, which were taken in possession by the police vide memo Ex.PW10/A.

Himmat Singh produced photographs of the marriage of his daughter Jaspreet Kaur with appellant Kulwinder Singh, which were taken in possession by the police vide memo Ex. PB. The statements of witnesses

under Section 161 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' - for short) were recorded.

Further investigation in the case was conducted by ASI Gurpal Singh (PW-10) and DSP Shamsheer Singh. ASI Gurpal Singh (PW-10), on 14.05.2005, arrested Kulwinder Singh appellant and prepared his personal search memo (Ex. PW10/B). Notice of his arrest was served on him and his legal heirs vide memo Ex. PW10/C. The Photographer Sanjeev Kumar (PW7), on 05.06.2005, produced the photographs of the deceased taken at the spot before ASI Gurpal Singh (PW-10). He attached the same with the file and recorded the statement of Sanjeev Kumar (PW-7).

After completion of the investigation, police report (challan) in terms of Section 173 Cr.P.C. was filed in the Court of learned Judicial Magistrate First Class, Nabha, on 02.07.2005 alleging the commission of an offence under Section 306 IPC.

The learned Judicial Magistrate First Class, Nabha, observed that the offence punishable under Section 306 IPC alleged to have been committed by the accused (appellant), was triable exclusively by the Court of Sessions. Accordingly, the case was committed to the Court of learned Sessions Judge, Patiala, vide order dated 02.07.2005.

The learned Additional Sessions Judge to whom the case was assigned vide order dated 29.07.2005 framed charge against Kulwinder Singh (appellant) for the commission of an offence punishable under Section 306 IPC. It was alleged that on 02.05.2005 at about 2:30 p.m., in the area of village Bheelowal, he abetted the commission of suicide by Jaspreet Kaur his wife by strangulation and thereby committed an offence punishable under Section 306 IPC and within his cognizance.

After framing of the said charge on 29.07.2005, evidence of the prosecution was recorded. The prosecution on 03.10.2005, filed an application under Section 319 Cr.P.C. for summoning the additional accused. Another application was filed under Section 216 Cr.P.C. for alteration of the charge.

The learned Additional Sessions Judge, Patiala, vide order dated 14.11.2005, allowed both the applications under Sections 319 and 216 Cr.P.C. The charge against Kulwinder Singh (appellant) was ordered to be amended to one under Section 304-B IPC; besides, Karnail Singh, Paramjit Kaur, Jagtar Singh and Gurmeet Kaur i.e. father-in-law, mother-in-law, brother-in-law and sister-in-law of deceased Jaspreet Kaur were summoned for trial for the commission of an

offence punishable under Section 304-B IPC. On appearance, charge was framed against the appellant and the four others, who were summoned on 27.01.2006 for facing trial for the commission of an offence punishable under Section 304-B IPC. According to the amended charge-sheet dated 27.01.2006, it was alleged that on 02.05.2005 at about 02:30 p.m. in the area of village Bheelowal, all the five named accused caused death of Jaspreet Kaur by strangulation or otherwise than under normal circumstances within seven years of her marriage and that she was subjected to cruelty soon before her death or harassed by Kulwinder Singh (appellant) being her husband and his co-accused being his relatives in connection with demand of dowry and thereby they all committed an offence punishable under Section 304-B IPC and within the cognizance of the Court.

The prosecution, in order to establish its case, examined as many as twelve witnesses, besides, tendered documents in evidence. The statements of all the accused including Kulwinder Singh (appellant) was recorded in terms of Section 313 Cr.P.C.

Kulwinder Singh (appellant), in his statement under Section 313 Cr.P.C., took the stand that the case was false.

He was working as a carpenter and had gone for work on the day of the incident. He left the house at 08:00 a.m. and returned at 3:00 p.m. Then he came to know that Jaspreet Kaur had died under mysterious circumstances. Prior to that day, i.e. on 01.05.2005, he called parents of Jaspreet Kaur to his house, as she was not willing to reside with him. She had relations (extra-marital) with her brother-in-law Balwant Singh. Due to this reason a quarrel had taken place. Her parents made her understand the reason on 01.05.2005 and had beaten her up in the morning of 02.05.2005. They were present, when they left the house. No offence had been committed by him.

The learned trial Court, after considering the evidence and material on record, convicted Kulwinder Singh (appellant) for the commission of an offence punishable under Section 304-B IPC and sentenced him to undergo imprisonment for life. The charge against the other accused namely, Karnail Singh, Paramjit Kaur, Gurmit Kaur and Jagtar Singh was not found to be proved beyond shadow of reasonable doubt and they were accordingly acquitted of the charge framed against them.

The appellant aggrieved against his conviction and order of sentence has filed the present appeal.

Mr. Manoj Kumar, Advocate learned counsel appearing for the appellant submits that the death of Jaspreet Kaur is a case of suicide as Dr. Naresh Kumar, Medical Officer (PW-9), who conducted the post-mortem examination of the dead body of Jaspreet Kaur in his cross-examination inter alia stated that strangulation can be homicidal or suicidal; besides, it is submitted that there is no evidence in the statement of complainant Himmat Singh, which shows that there had ever been any demand raised for dowry. In fact, it is submitted that Kulwinder Singh (appellant) was not present in the house at the time of incident and Himmat Singh (complainant) PW-3 in his cross-examination admitted as correct that Kulwinder Singh was doing work as a carpenter in the same village on 02.05.2005 in the house of someone else. It is submitted that the appellant had examined Harinder Singh (DW-3), who had gone to engage Kulwinder Singh (appellant) to do his work on his motor in the fields, which shows that Kulwinder Singh (appellant) was not present in the house at the time of the incident.

In response, Ms. Amarjit Kaur Khurana, learned Additional A.G., Punjab, appearing for the State submitted that the prosecution has established its case against the

appellant beyond shadow of reasonable doubts. It is submitted that the death of Jaspreet Kaur had occurred within eight months of her marriage with the appellant Kulwinder Singh and it had come in the evidence that soon before her death, she was subjected to cruelty in connection with demand for dowry and, therefore, the learned trial Court rightly held that the prosecution had succeeded in proving that the appellant caused the death of his wife Jaspreet Kaur by strangulation or otherwise than under normal circumstances within seven years of her marriage and that she was subjected to cruelty soon before her death. It is submitted that the order of the learned trial Court warrants no interference by this Court.

We have given our thoughtful consideration to the matter and with the assistance of learned counsel for the parties gone through the evidence and material on record.

Himmat Singh (complainant) PW-3 while appearing in the witness-box has reiterated his statement made before the police.

According to the prosecution case, the marriage of Jaspreet Kaur daughter of complainant was solemnized with Kulwinder Singh about eight months earlier to the unfortunate incident that had occurred on 02.05.2005.

The complainant Himmat Singh (PW-3) stated that after marriage of his daughter Jaspreet Kaur, her in laws as including Kulwinder Singh taunted her for bringing less dowry. The complainant received a telephone message on 01.05.2005 on his mobile phone from his daughter informing him that her in-laws were harassing her for bringing less dowry and he should come and take her to her parents' house. The complainant on 02.05.2005 in the early hours along with his brother-in-law, i.e. wife sister's husband ('sadu'), namely, Kesar Singh resident of village Manvi and Karamjit Singh resident of village Raipur and elder son-in-law namely Balwant Singh went to the house of in-laws of his daughter Jaspreet Kaur. All the in laws of Jaspreet Kaur were there. They were made to understand and be reasonably. After that, they returned to their house.

On the same day at about 06:00 p.m., Kesar Singh brother-in-law of the complainant Himmat Singh (PW-3), i.e. husband of the sister of his wife, on his mobile phone gave a message that the in-laws of Jaspreet Kaur had committed her murder and the complainant should reach village Bheelowal. The complainant along with his brother Mehar Singh and cousin Santokh Singh and other respectable persons reached village Bheelowal at the house

of in-laws of Jaspreet Kaur. On reaching there, he saw the dead body of his daughter Jaspreet Kaur lying on a bed. It is alleged by the complainant that the death of his daughter was caused by the in-laws of his daughter and also her husband Kulwinder Singh (appellant). The complainant left Major Singh, his brother and other persons of the village near the dead body of Jaspreet Kaur. He along with his cousin Santokh Singh reached Police Station Sadar Nabha and got the FIR registered. From his cross-examination, learned counsel for the appellant seeks to draw an inference that he had stated as correct that Kulwinder Singh (appellant) was doing work as a carpenter in the same village on 02.05.2005 in the house of some one else. Therefore, on the strength of the said cross-examination, it is submitted that the appellant was not present at the place of occurrence at the relevant time. However, it may be noticed that the appellant himself stated on 02.05.2005 that he had returned home at 3:00 p.m. It may also be noticed that when a plea of alibi that is raised by an accused, then in terms of Section 103 of the Indian Evidence Act, 1872 is to be proved by him.

Section 103 of the Indian Evidence Act, 1872, relates to burden of proof as to a particular fact. It is

provided that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. In 'State of Haryana vs. Sher Singh', AIR 1981 SC 1021, it was held that when an accused pleads alibi, the burden is on him to prove it.

The appellant in order to prove his plea of alibi has examined Harinder Singh (DW-3), who stated that he knew Kulwinder Singh (appellant) and his family. He went to the house of Kulwinder Singh on 02.05.2005 at 8:30 a.m. He (DW-3) went to engage Kulwinder Singh to do his work on his motor in the fields. On that day, relatives of Kulwinder Singh (appellant) were present in the house. One of them was his father-in-law and the other was his brother-in-law; besides, there were two-three other persons who were present in the house of Kulwinder Singh (appellant). Kulwinder Singh (appellant) informed him (DW-3) that he has to go to village Sukhowal as he was already doing carpenting work in the house of Jot Singh. Kulwinder Singh (appellant) informed him that he would do his (DW-3) work on the next day. Thereafter, it is stated by Harinder Singh (DW-3) that Kulwinder Singh (appellant) went to village

Sukhowal and then he went to his house. He (DW-3) had not heard anything regarding the maltreatment meted out to Jaspreet Kaur or demands for dowry made from her by the members of the family of Kulwinder Singh (appellant). Kulwinder Singh (appellant) and his family members were innocent.

It may be noticed that Harinder Singh (DW-3) is from village Bheelowal, which is the native village of the appellant and it is not shown by the appellant as to whether he had indeed gone to the house of Jot Singh in village Sukhowal. The said Jot Singh has also not been examined to prove the plea of alibi of the appellant, the burden of which, as already noticed above, was on the appellant. Therefore, the plea of alibi is held to be not proved.

Dr. Naresh Kumar, Medical Officer (PW-9), who along with Dr. Paramvir Singh and Dr. Devinder Jit Kaur conducted the post-mortem examination on the dead body of Jaspreet Kaur, opined that the cause of death in their opinion was due to asphyxia caused by strangulation. In cross-examination, it is stated by the doctor that strangulation can be homicidal or suicidal. On the strength of the same, it is contended by learned counsel for the appellant that the appellant is liable to be given benefit of

doubt as strangulation can also be suicidal and in the present case, it is a case of suicide for which the prosecution had initially filed the 'challan' for abetment of suicide under Section 306 IPC. It may, however, be noticed that Dr. Naresh Kumar (PW-9) on a suggestion given to him, stated that it was wrong to suggest that in this case the strangulation could be suicidal. Therefore, the fact of suicide has been discounted by the doctor. Besides, it is to be noticed that three injuries were found on the dead body of Jaspreet Kaur. Injuries No.1 and 2 on the person of Jaspreet Kaur are lacerated wounds of 1 cm x 0.2 cm over the left cheek and reddish abrasion over the left ear lobule. Injury No. 3 is an 1 cm wide brown coloured depressed groove like ligature mark running round the neck at the level of cricoid cartilage. The edges of the grooves had bruises and echhymotic spots. The ligature mark is more prominent on the back of the neck and is running obliquely upwards on right side upto the angle of the jaw.

In Medical Jurisprudence and Toxicology by Modi, 24th Edition 2011 at page 456, a tabulated chart between hanging and strangulation has been given. At serial No.13 of the chart, in case of hanging, it is mentioned that scratches, abrasions and bruises on the face, neck and other

parts of the body are usually not present. However, in the case of strangulation, it is mentioned that scratches, abrasions fingernai marks and bruises on the face, neck and other parts of the body are usually present. Injuries No.1 and 2 are injuries on the face and left ear lobule, which give more acceptability to the deposition of Dr. Naresh Kumar that it is a case of strangulation. In the said chart at serial No. 7, in the case of hanging, it is mentioned, "abrasions and ecchymoses round about the edges of the ligature mark, rare". In the case of strangulation, it is mentioned, "abrasions and ecchymoses round about the edges of the ligature mark, common". In the present case, injury No.3 is mentioned as an 1 cm wide brown coloured depressed groove like ligature mark running round the neck at the level of cricoid cartilage. The edges of the grooves had bruises and echhymotic spots. It is mentioned that the ligature mark is more prominent on the back of the neck and it was running obliquely upwards on right side up to the angle of the jaw. Therefore, the ecchymoses spots, which are common in the case of strangulation, have been observed by the board of doctors also comprising of Dr. Naresh Kumar (PW-9). In view of the injuries and the opinion of Dr. Naresh Kumar, it is a case of death due to

strangulation.

The contention of the learned counsel for the appellant that there has been a mere bald assertion on the part of the appellant that there was demand for dowry without anything more, may be noticed. In this regard, it may be noticed that Himmat Singh (PW-3) has submitted that his daughter had informed him a day before the incident on 02.05.2005, i.e. on 01.05.2005, that her in-laws were ill-treating her due to the reason that she had brought insufficient dowry.

It is to be noticed that the prosecution case has been further supported by the evidence of Karamjit Singh (PW-4), who stated that he along with Himmat Singh, his brother-in-law on 02.05.2005 had gone to the house of the in-laws of Jaspreet Kaur and settled the dispute regarding dowry. It is stated that on their intervention, it was settled with the accused regarding the demand of dowry articles. He also stated that the cause of death of Jaspreet Kaur was due to bringing less dowry by Jaspreet Kaur in her marriage.

Balwant Singh (PW-5), who is the elder son-in-law of the complainant Himmat Singh (PW-3) has also supported the prosecution case. He stated that he along with his father-in-law Himmat Singh (PW-3) and mother's sister's

husband ('masad') namely Karamjit Singh and another uncle ('masad') namely, Kesar Singh came to his village Kheri-Jattan. Then he along with the above said persons reached village Bheelowal at the house of Karnail Singh, father of the appellant-Kulwinder Singh. They had gone for settlement of the dispute of dowry articles of his sister-in-law (wife's sister) namely, Jaspreet Kaur (deceased).

According to the learned counsel for the appellant, Kulwinder Singh (appellant) in his statement under Section 313 Cr.P.C. has taken a stand that Jaspreet Kaur was having illicit relations with her brother-in-law i.e. Balwant Singh (PW-5). In cross-examination, a suggestion was given to him that he was having illicit relations with Jaspreet Kaur (deceased). He outrightly denied the suggestion that he was having illicit relations with Jaspreet Kaur (deceased). He voluntarily stated that he was treating Jaspreet Kaur as his sister. He denied the suggestion that due to this relation he did not want to settle Jaspreet Kaur in the house of Kulwinder Singh (appellant).

The appellant also examined Gurvinder Singh (DW-4). He stated that Kulwinder Singh (appellant) was the son of his uncle, and Balwant Singh (PW-5) was the son of his aunt i.e. father's sister ('bua'). His (DW-4's) marriage was solemnized with Nirmaljit Kaur on 29.04.2005. In his

marriage, Kulwinder Singh (appellant) and his family members and Balwant Singh (PW-5) and other relatives were also present. It is to be noticed that the eldest daughter of the complainant Himmat Singh namely Sarabjit Kaur is married to Balwant Singh (PW-5). This marriage was solemnized about two years earlier to the incident. Gurvinder Singh (DW-4) further stated that on the date of his marriage, Balwant Singh wanted to take snaps with Jaspreet Kaur wife of Kulwinder Singh (appellant) forcefully and due to this reason, dispute had occurred between Kulwinder Singh (appellant) and Balwant Singh (PW-5). Balwant Singh (PW5) held out threats to Kulwinder Singh (appellant) to the effect that he would face the consequences within four-five days. He identified the snap as Ex.DW4/A. He also identified the snap of Balwant Singh (PW-5) as Ex.DW4/B. He had got both the snaps from his marriage album. It is stated that there was no dispute regarding dowry in the family of Kulwinder Singh (appellant) with Jaspreet Kaur. In cross-examination, it was stated by Gurvinder Singh (DW-4) that he had not lodged any FIR at any police station regarding the dispute of Kulwinder Singh (appellant) with Balwant Singh (PW-5) and he also did not lodge any FIR regarding the occurrence of 29.04.2005. It is

stated that he was in possession of photograph of Balwant Singh and Jaspreet Kaur (deceased). The same was not on the file. The photographs though are stated to have been exhibited are not traceable on the trial Court record. There are other photographs of the marriage on record, which have only been marked and not exhibited on record. Even otherwise, merely because the photograph of Balwant Singh (PW-5) were snapped with Jaspreet Kaur (deceased) it would not mean that there were illicit relations between them. It is to be noticed that the photographs Ex.DW-4/A and Ex.DW-4/B have been exhibited in evidence only on the statement of Gurvinder Singh (DW-4) and have not been proved by calling the photographer who had taken them. In the case of Sait Tarajee Khimchand and others v. Yelamarti Satyam Alias Satteyya, AIR 1971 SC 1865, it was held that mere marking of a document does not dispense with the proof of a document. This was reiterated in the case of Narbada Devi Gupta v. Birendra Kumar Jaiswal and another, (2003) 8 SCC 745 wherein it was held that mere marking of documents is not enough and execution has to be proved by admissible evidence. Therefore, merely because the photographs Ex.DW-4/A and Ex. DW-4/B have been admitted in evidence in the statement of Gurvinder Singh

(DW-4) these are not liable to be read in evidence in the absence of formal proof. Therefore, the said contention of the learned counsel for the appellant is not tenable.

The appellant also examined Shamsheer Singh, DSP (DW-2), who was then DSP Nabha on 02.05.2005 i.e. the date of incident. He stated that on an application of Himmat Singh complainant, he conducted an inquiry in this case. During inquiry, he recorded statements of Himmat Singh, ASI Gurpal Singh and also inquired from the people of the locality. He recorded statements Ex.DX of Kesar Singh, Ex.DY of Paramjit Singh and Ex.DZ of Balwant Singh; besides, that of ASI Gurpal Singh. He also made inquiry from people of the locality. During inquiry, it was found by him that a dispute was pending between Gurmit Kaur (accused No.4) and her husband i.e. Gurpreet Singh at Police Station Sadar Dhuri. Gurmit Kaur is the sister of appellant Kulwinder Singh. She was accused No.4 in the case and was married with Gurpreet Singh. It is further stated by Shamsheer Singh, the then DSP (DW-2) that due to the said dispute on 02.05.2005, Karnail Singh (accused No.3), Paramjit Kaur (accused No.2) wife of Karnail Singh and Gurmit Kaur (accused No.4) went to office of DSP Dhuri for the purpose of inquiry. This fact was got verified by

Shamsher Singh (DW-2) by sending ASI Gurpal Singh to the office of DSP Dhuri. During inquiry, Karnail Singh, Paramjit Kaur, Gurmit Kaur and Jagtar Singh were found innocent by him. He prepared inquiry report Ex.DW-2/A, which bears his signatures. The statement of Shamsher Singh (DW-2) is not of much relevance as the said accused namely Karnail Singh father in law, Paramjit Kaur mother in law, Gurmit Kaur sister in law and Jagtar Singh brother in law respectively of Jaspreet Kaur have been acquitted by the learned Additional Sessions Judge, Fast Track Court, Patiala. Nevertheless it does go to show that the complainant had exaggerated the prosecution case.

The learned trial Court noticed that Jaspreet Kaur died after eight months of her marriage with Kulwinder Singh (appellant). It was held that Kulwinder Singh (appellant) being the husband and master of the matrimonial house where Jaspreet Kaur was residing with him was required to explain the circumstances under which Jaspreet Kaur had died. However, he had failed to do so. His plea that he was not present in the house at the time of her death, according to the learned trial Court appeared to be an after thought. It may also be noticed that the complainant did try to inflate his case by roping in other

family members of the appellant. In fact the other family members of the appellant were found innocent in the inquiry conducted by Shamsheer Singh DSP (DW-2). Jaspreet Kaur died after eight months of her marriage with Kulwinder Singh (appellant). It is to be noticed that no dowry articles have been shown to be recovered from the house of the appellant. Therefore, according to learned counsel for the appellant it cannot be said that the death of Jaspreet Kaur had occurred due to cruelty for and in connection with demand for dowry. In this regard, it is to be noticed that the death of Jaspreet Kaur occurred within eight months of her marriage and there is evidence on record that the appellant had raised demand for dowry. Jaspreet Kaur had made a telephone call to the complainant on 01.05.2005 i.e. a day before her death that her in laws were harassing her for not bringing dowry and she should be taken from her in law's house. On the next day i.e. 02.05.2005 the complainant along with Kesar Singh husband of his wife's sister, Karamjit Singh of village Raipur and his elder son in law Balwant Singh (PW-5) went to village Bheelowal to the house of Jaspreet Kaur. The father in law, mother in law, sister in law and husband of Jaspreet Kaur were advised by them and they came back. Later in the evening at about

6.00 pm, Kesar Singh informed the complainant on his mobile that Jaspreet Kaur had been killed. The death of Jaspreet Kaur is unnatural and being within eight months of her marriage with the appellant and there being demands for dowry, it can safely be inferred that she was subjected to cruelty for and in connection with demand for dowry and died in her matrimonial home by strangulation. The presumption of death on the part of the appellant has to be drawn as he was with her and there is no direct evidence that he had committed her murder.

Therefore, we find no infirmity with the judgment of conviction and order of sentence rendered by the learned trial Court.

Learned counsel for the appellant, however, submits that the appellant has been convicted for the offence punishable under Section 304-B IPC and he has undergone more than six years of imprisonment. Therefore, in the facts and circumstances of the case and keeping in view the fact that the other co-accused have been acquitted, the sentence of imprisonment may be reduced.

Learned counsel for the State has, however, opposed the plea and submitted that the death had occurred within eight months of marriage and sentence of

imprisonment was not liable to be reduced.

We have been given our thoughtful consideration to the matter.

Learned counsel for the State has filed affidavit of Shri Shamsher Singh, Officiating Deputy Superintendent, New District Jail, Nabha, mentioning the period of imprisonment undergone by Kulwinder Singh (appellant). According to the affidavit, the appellant has undergone actual imprisonment of six years, six months and ten days as on 13.01.2016. With remission, he has undergone twelve years, nine months and ten days of imprisonment. He has earned remissions of five years and jail remission of one year and three months. There is no other case registered against him.

In terms of Section 304-B (2) IPC, it is provided that whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Keeping in view the facts and circumstances of the case and the fact that the appellant has been in custody throughout and was not granted any bail and he has undergone actual imprisonment of six years, six months and ten days, it would be just and expedient that the sentence of

imprisonment is reduced to seven years of actual imprisonment, besides, the appellant shall pay compensation of Rs. One lac to the complainant for causing the death of Jaspreet Kaur. The compensation that is payable is only for the purpose of ensuring the complainant that he has not been forgotten by the criminal justice system.

Accordingly, the appeal of the appellant against his conviction is dismissed. However, the sentence of imprisonment is modified from that of life imprisonment to that of actual imprisonment for seven years; besides, payment of Rs. One lac compensation to the complainant.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

February 18, 2016
Sheetal/A.Kaundal